

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

**IN RE: BLUE CROSS
BLUE SHIELD
ANTITRUST LITIGATION
(MDL NO. 2406)**

)
) **Master File No. 2:13-CV-20000-RDP**
)
) **This document relates to Provider Cases**
)
)

**PROVIDER PLAINTIFFS' EXECUTIVE SUMMARY OF EXPERT REPORT OF
DANIEL J. SLOTTJE, PH.D.**

Professor Daniel J. Slottje is a leading expert in the analysis of healthcare provider claims data submitted to insurance companies, and he has assessed damages for plaintiffs and defendants in numerous cases. In his report, he has applied Professor Haas-Wilson's determinations of the effect of Defendants' illegal conduct to determine the damages to each and every member of the Acute Care Hospital Provider Class in Alabama and the class as a whole under each of the claims or potential scenarios that could arise from those claims. The aggregate damages for the entire Acute Care Hospital Provider Class in Alabama if the class prevails on all claims is \$4,364,277,953.

Professor Slottje's credentials are impeccable. He is a Professor Emeritus of Economics at Southern Methodist University in Dallas, Texas, where he has taught classes on price theory, econometrics, industrial organization and antitrust economics. He is a Senior Managing Director with FTI Consulting, Inc., a global business advisory firm. Professor Slottje has provided consulting services to clients in various industries for over 30 years including in providing litigation consulting services to clients in the healthcare industry. He has consulted and testified on healthcare litigation matters on topics such as class certification issues, the statistical reliability of the health insurance claims adjudication process with respect to under-

reimbursement issues, the statistical reliability of health insurance claims databases, and antitrust issues in the healthcare industry. Further, Professor Slottje has extensive experience working with some of the largest health claims data sets ever used in litigation. In *American Medical Association v. United HealthCare Corporation*, 2009 WL 4403185 (S.D.N.Y. 2009), in a final approval hearing on a settlement, the Southern District of New York found Professor Slottje's analysis on behalf of UHC and the proposed settlement "the most reasonable one before the Court" in a battle of the experts with a series of objectors. His multi-year work on that case, as well as others, has provided Professor Slottje with extraordinary insight into the world of healthcare claims data, edits and extrapolation.

Professor Slottje has calculated damages using common evidence and methodology for all 106 members of the Acute Care Hospital Provider Class in Alabama. Because he has already calculated damages using ordinary well-accepted principles of econometrics and damages, Professor Slottje's Report leaves no doubt that Provider Plaintiffs are able to provide common proof of damages both at class certification and trial. Further, Professor Slottje is able to disaggregate damages and tie them to the Provider Plaintiffs' various theories of harm such that there can be no doubt that his damages approach satisfies *Comcast Corp. v. Behrend*, 133 S. Ct. 1426 (2013).

Professor Slottje's primary opinions are summarized below:

1. Professor Slottje finds that: (1) economic damages for putative Acute Care Hospital Provider Class members can be calculated on a class-wide basis using a common methodology and common data; and (2) as his calculation of class-wide economic damages demonstrates, all putative Class members suffered economic damages from July 24, 2008 to April 15, 2019. More specifically:

- a. In paragraphs 24-31 of his Report, Professor Slottje demonstrates that a common methodology can be used to calculate economic damages for putative Class members. The underpayment to putative Class members from the alleged conduct can be calculated as the difference between the prices that the Blues would have paid putative Class members but for the alleged conduct (“but-for prices”) and the prices the Blues actually paid (“actual prices”). The total economic damages for putative Class members are equal to the total amount of underpayments for services subject to economic damages from July 24, 2008 to April 15, 2019. Slottje Report at ¶¶ 29-31, pp.12-13.
- b. In paragraphs 32-46 of his Report, Professor Slottje concludes that common data can be used to calculate economic damages for putative Class members. Defendants and OptumInsight Inc. (“Optum”), a non-party to this litigation, produced data that contain the prices for the services that putative Class members and other healthcare providers in the United States provided from July 24, 2008 to December 31, 2015 for which health insurance claims data are available in this litigation. Blue Cross Blue Shield of Alabama (“BCBS-AL”) also produced data that allows Professor Slottje to account for adjustments to the prices that the Blues paid to putative Class members. Slottje Report at ¶ 41, p. 17.
- c. Professor Slottje finds that in the April 15, 2019 Expert Report of Deborah Haas-Wilson, Ph.D. (“Haas-Wilson Report”), Professor Haas-Wilson presents an econometric model that estimates the independent impacts of economic factors on the prices for healthcare providers’ services in the United States. The econometric model yields measures of harm that can be used to calculate economic damages for putative

Class members on a class-wide basis. The estimates from the econometric model can be used to calculate the but-for prices for putative Class members' services that are subject to economic damages by modeling alternative scenarios with and without the alleged conduct. The difference between the but-for and actual prices can be used to calculate economic damages from the alleged conduct on a class-wide basis. Slottje Report at ¶¶47-70, pp. 20-30.

- d. Using the Defendants' own data common to all Class members and empirical results from Professor Haas-Wilson's econometric model, Professor Slottje demonstrates that economic damages can be calculated on a class-wide basis by actually calculating the economic damages for each putative General Acute Care Hospital Provider Class member. Slottje Report at ¶¶71-82, pp. 30-38. **He determined that 106 of the 106 putative Class members (100%) suffered economic damages from the alleged conduct.** Slottje Report at ¶80, p. 36. It is clear that all or substantially all of the putative Acute Care Hospital Provider Class has suffered harm because of the alleged conduct.
- e. Based on his calculations, Professor Slottje determines that total class-wide economic damages are **\$4,364,277,953** from July 24, 2008 to April 15, 2019. *See* Report at ¶80, p. 36. As December 31, 2015 is the most recent claims adjudication date for which health insurance claims data for putative Class members are available, Professor Slottje was required to extrapolate the economic damages for putative Class members through April 15, 2019. *See* Appendix B. He has also calculated the damages for each and every class member. Exhibit 4 column 7 to his report enumerates the damages for each and every class member assuming the Class prevails on all claims. If

Defendants produce more recent health insurance claims data, he will update the figures for those years. He used ordinary and well accepted statistical principles of extrapolation to estimate the figures for these years. *See* Appendix B. As damages are still accruing to the putative Class, his methodology allows him to continue extrapolating damages as necessary into the future.

- f. Finally, in paragraphs 83-88, Professor Slottje walks through each of Professor Haas-Wilson's seven different combinations of outcomes that the Court or jury could arrive at and demonstrates that total class-wide economic damages can be disaggregated if the trier of fact finds some but not all the alleged conduct to be in violation of the antitrust laws. His exhibits demonstrate each of the range of outcomes for *each* member of the putative Class for each of these scenarios. Slottje Report, Exhibits 4-5, 8-10. These scenarios are described in Professor Slottje's report in paragraphs 83, 86-88 and Figure 5 of his report. Report at p. 38-42. The economic damages to each class member for each scenario are detailed in Exhibits 4 (Scenarios 1 and 4), 5 (Scenarios 3 and 6), 8 (Scenario 2), 9 (Scenario 5), and 10 (Scenario 7) of Professor Slottje's Report at Column 7. There can be no suggestion by Defendants that his analysis fails to satisfy the requirements of *Comcast*, no matter the range of outcomes at trial.

Respectfully submitted the 15th day of April, 2019.

/s/ Edith M. Kallas

Edith M. Kallas – ***Co-Lead Counsel***
WHATLEY KALLAS, LLP
1180 Avenue of the Americas, 20th Floor
New York, NY 10036
Tel: (212) 447-7060
Fax: (800) 922-4851
Email: ekallas@whatleykallas.com

Patrick J. Sheehan
WHATLEY KALLAS, LLP
60 State Street, 7th Floor
Boston, MA 02109
Tel: (617) 573-5118
Fax: (617) 371-2950
Email: psheehan@whatleykallas.com

Henry C. Quillen
WHATLEY KALLAS, LLP
159 Middle Street, Suite 2C
Portsmouth, NH 03801
Tel: (603) 294-1591
Fax: (800) 922-4851
Email: hquillen@whatleykallas.com

Charles Clinton Hunter
HAYES HUNTER PC
4265 San Felipe, Suite 1000
Houston, TX 77027
Tel: (281) 768-4731
Fax: (713) 583-7047
Email: chunter@hayeshunterlaw.com

/s/ Joe R. Whatley, Jr.

Joe R. Whatley, Jr. – ***Co-Lead Counsel***
W. Tucker Brown
WHATLEY KALLAS, LLP
2001 Park Place North
1000 Park Place Tower
Birmingham, AL 35203
Tel: (205) 488-1200
Fax: (800) 922-4851
Email: jwhatley@whatleykallas.com
tbrown@whatleykallas.com

Deborah J. Winegard
WHATLEY KALLAS, LLP
1068 Virginia Avenue, NE
Atlanta, GA 30306
Tel: (404) 607-8222
Fax: (404) 607-8451
Email: dwinegard@whatleykallas.com

E. Kirk Wood, Jr. – ***Local Facilitating Counsel***
WOOD LAW FIRM LLC
P. O. Box 382434
Birmingham, AL 35238
Tel: (205) 612-0243
Fax: (205) 705-1223
Email: ekirkwood1@bellsouth.net

Aaron S. Podhurst – ***Plaintiffs' Steering Committee***
Peter Prieto – ***Chair, Expert Committee***
PODHURST ORSECK, P.A.
One S.E. 3rd Avenue
Suite 2300
Miami, FL 33131
Tel: (305) 358-2800
Fax: (305) 358-2382
Email: apodhurst@podhurst.com
pprieto@podhurst.com

Dennis Pantazis – ***Plaintiffs’ Steering Committee***
Brian Clark – ***Discovery Committee***
WIGGINS CHILDS PANTAZIS FISHER
GOLDFARB
The Kress Building
301 Nineteenth Street North
Birmingham, AL 35203
Tel: (205) 314-0500
Fax: (205) 254-1500
Email: dgp@wcqp.com
bclark@wcqp.com

U.W. Clemon – ***Plaintiffs’ Steering Committee***
U. W. Clemon, LLC
5202 Mountain Ridge Parkway
Birmingham, AL 35222
Tel: (205) 837-2898
Email: clemonu@bellsouth.net

Dennis C. Reich – ***Chair, Damages Committee***
REICH & BINSTOCK, LLP
4265 San Felipe, Suite 1000
Houston, TX 77027
Tel: (713) 622-7271
Fax: (713) 623-8724
Email: dreich@rbfirm.net

J. Mark White – ***Litigation Committee***
Augusta S. Dowd – ***Chair, Litigation Committee***
Linda G. Flippo – ***Discovery Committee***
WHITE ARNOLD & DOWD, P.C.
The Massey Building
2025 Third Avenue North, Suite 500
Birmingham, AL 35203
Tel: (205) 323-1888
Fax: (205) 323-8907
Email: mwhite@whitearnolddowd.com
adowd@whitearnolddowd.com
lflippo@whitearnolddowd.com

Nicholas B. Roth – ***Chair, Discovery Committee***
Julia Smeds Roth – ***Discovery Committee***
EYSTER KEY TUBB ROTH MIDDLETON
& ADAMS, LLP
402 East Moulton Street, SE
Decatur, AL 35602
Tel: (256) 353-6761
Fax: (256) 353-6767
Email: nbroth@eysterkey.com
jroth@eysterkey.com

Van Bunch – ***Chair, Class Certification Committee***
BONNETT FAIRBOURN FRIEDMAN &
BALINT, P.C.
2325 E. Camelback Road, Suite 300
Phoenix, AZ 85016
Tel: (602) 274-1100
Fax: (602) 274-1199
Email: vbunch@bffb.com

David A. Balto – ***Expert Committee***
THE LAW OFFICES OF DAVID A. BALTO
1350 I Street, N.W., Suite 850
Washington, DC 20005
Tel: (202) 789-5424
Fax: (202) 589-1819
Email: david.balto@dcantitrustlaw.com

Robert J. Axelrod – ***Chair, Written Submissions Committee***
AXELROD & DEAN LLP
830 Third Avenue, 5th Floor
New York, NY 10022
Tel: (646) 448-5263
Fax: (212) 840-8560
Email: rjaxelrod@axelroddean.com

Joey K. James – *Litigation Committee*
BUNCH & JAMES
P. O. Box 878
Florence, AL 35631
Tel: (256) 764-0095
Fax: (256) 767-5705
Email: joey@bunchandjames.com

Richard S. Frankowski – *Discovery Committee*
THE FRANKOWSKI FIRM, LLC
231 22nd Street South, Suite 203
Birmingham, AL 35233
Tel: (205) 390-0399
Fax: (205) 390-1001
Email: richard@frankowskifirm.com

John C. Davis – *Written Submissions Committee*
LAW OFFICE OF JOHN C. DAVIS
623 Beard Street
Tallahassee, FL 32303
Tel: (850) 222-4770
Email: john@johndavislaw.net

Mark K. Gray – *Discovery Committee*
GRAY & WHITE
713 E. Market Street, Suite 200
Louisville, KY 40202
Tel: (502) 805-1800
Fax: (502) 618-4059
Email: mgray@grayandwhitelaw.com

Stephen M. Hansen – *Class Certification Committee*
LAW OFFICE OF STEPHEN M. HANSEN
1821 Dock Street
Tacoma, WA 98402
Tel: (253) 302-5955
Fax: (253) 301-1147
Email: steve@stephenmhansenlaw.com

W. Daniel Miles, III – *Written Submissions Committee*
BEASLEY ALLEN CROW METHVIN
PORTIS
& MILES, P.C.
218 Commerce Street
Montgomery, AL 36104
Tel: (800) 898-2034
Fax: (334) 954-7555
Email: dee.miles@beasleyallen.com

Michael C. Dodge – *Expert Committee*
GLAST PHILLIPS & MURRAY, P.C.
14801 Quorum Drive, Suite 500
Dallas, TX 75254
Tel: (972) 419-7172
Email: mdodge@gpm-law.com

Michael E. Gurley, Jr. – *Discovery Committee*
Attorney at Law
24108 Portobello Road
Birmingham, AL 35242
Tel: (205) 908-6512
Email: mgurleyjr@yahoo.com

Lynn W. Jinks, III – *Expert Committee*
Christina D. Crow – *Discovery Committee*
JINKS CROW & DICKSON, P.C.
219 North Prairie Street
Union Springs, AL 36089
Tel: (334) 738-4225
Fax: (334) 738-4229
Email: ljinks@jinkslaw.com
ccrow@jinkslaw.com

Myron C. Penn – *Discovery Committee*
PENN & SEABORN, LLC
53 Highway 110
Post Office Box 5335
Union Springs, AL 36089
Tel: (334) 738-4486
Fax: (334) 738-4432
Email: myronpenn28@hotmail.com

Harley S. Tropin – ***Damages Committee***
Javier A. Lopez – ***Discovery Committee***
KOZYAK TROPIN &
THROCKMORTON, P.A.
2525 Ponce De Leon Boulevard, 9th Floor
Miami, FL 33134
Tel: (305) 372-1800
Fax: (305) 372-3508
Email: hst@kttl.com
jal@kttl.com

C. Wes Pittman – ***Settlement Committee***
THE PITTMAN FIRM, P.A.
432 McKenzie Avenue
Panama City, FL 32401
Tel: (850) 784-9000
Fax: (850) 763-6787
Email: wes@pittmanfirm.com

Robert B. Roden – ***Litigation Committee***
SHELBY RODEN, LLC
2956 Rhodes Circle
Birmingham, AL 35205
Tel: (205) 933-8383
Fax: (205) 933-8386
Email: rroden@shelbyroden.com

Gary E. Mason – ***Class Certification Committee***
WHITFIELD BRYSON & MASON, LLP
1625 Massachusetts Ave. NW, Suite 605
Washington, DC 20036
Tel: (202) 429-2290
Fax: (202) 640-1160
Email: gmason@wbmlp.com

Michael L. Murphy – ***Discovery Committee***
BAILEY GLASSER LLP
910 17th Street, NW, Suite 800
Washington, DC 20006
Tel: (202) 463-2101
Fax: (202) 463-2103
Email: mmurphy@baileyglasser.com

J. Preston Strom, Jr. – ***Litigation Committee***
STROM LAW FIRM, LLC
2110 N. Beltline Boulevard, Suite A
Columbia, SC 29204-3905
Tel: (803) 252-4800
Fax: (803) 252-4801
Email: petestrom@stromlaw.com

Thomas V. Bender – ***Discovery Committee***
Dirk L. Hubbard
HORN AYLWARD & BANDY, LLC
2600 Grand Blvd., Suite 1100
Kansas City, MO 64108
Tel: (816) 421-0700
Email: tbender@hab-law.com
dhubbard@hab-law.com

Gregory S. Cusimano – ***Litigation Committee***
CUSIMANO, ROBERTS & MILLS, LLC
153 South 9th Street
Gadsden, AL 35901
Phone: (256) 543-0400
Fax: (256) 543-0488
Email: greg@alalawyers.net

Brian E. Wojtalewicz
WOJTALEWICZ LAW FIRM, LTD.
139 N. Miles Street
Appleton, MN 56208
Tel: (320) 289-2363
Fax: (320) 289-2369
Email: brian@wojtalewiczlawfirm.com

Archie C. Lamb, Jr.
ARCHIE LAMB & ASSOCIATES, LLC
301 19th Street North, Suite 585
The Kress Bldg.
Birmingham, AL 35203-3145
(205) 458-1210
Email: alamb@archielamb.com

Lance Michael Sears
SEARS & SWANSON, P.C.
First Bank Building
2 North Cascade Avenue, Suite 1250
Colorado Springs, CO 80903
Tel: (719) 471-1984
Fax: (719) 577-4356
Email: lance@searsassociates.com

Paul Lundberg
LUNDBERG LAW, PLC
600 4TH Street, Suite 906
Sioux City, IA 51101
Tel: (712) 234-3030
Fax: (712) 234-3034
Email: paul@lundberglawfirm.com

Jessica Dillon
Ray R. Brown
Molly Brown
DILLON & FINDLEY, P.C.
1049 W. 5th Avenue, Suite 200
Anchorage, AK 99501
Tel: (907) 277-5400
Fax: (907) 277-9896
Email: Jessica@dillonfindley.com
Ray@dillonfindley.com
Molly@dillonfindley.com

Gwen Simons
Simons & Associates Law, P.A.
P.O. Box 1238
Scarborough, ME 04070-1238
Tel: (207) 205-2045
Fax: (207) 883-7225
Email: gwen@simonsassociateslaw.com

Cynthia C. Moser
HEIDMAN LAW FIRM
1128 Historic 4th Street
P. O. Box 3086
Sioux City, IA 51101
Tel: (712) 255-8838
Fax (712) 258-6714
Email: Cynthia.Moser@heidmanlaw.com